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Rajasekhar Vs. Siddalingappa

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Court : Karnataka

Decided On : Jul-29-1986

Reported in : ILR1986KAR2765

Judge : Nesargi and ;Desai, JJ.

Acts : Indian Majority Act, 1875 - Sections 3; Hindu Minority and Guardianship Act, 1956 - Sections 6, 8, 8(3) and 11; Code of Civil Procedure (CPC) , Order 40

Appeal No. : R.F.A. No. 81 of 1975

Appellant : Rajasekhar

Respondent : Siddalingappa

Advocate for Def. : V. Krishnamurthi and ;V. Tarakaram, ;A.M. D'sa and ;S. Shivaswamy, Advs.

Advocate for Pet/Ap. : S. Nanjundaswamy, Adv.

Disposition : Appeal dismissed

Judgement :

Nesargi, J.

1. The plaintiffs in O.S. No. 182/1964 on the file of the II Additional Civil Judge, Bangalore City have preferred (his appeal against the decree passed by the said

Court on 17-12-1974 dismissing the said suit.

2. The plaintiffs filed the suit for setting aside the alienations dated 9-12-1957 and 27-12-1958 in regard to item Nos. 1(b), II (a) and (b) of Schedule-A respectively and also the derivative alienations in favour of the other defendants. They also prayed for possession of the suit properties. Nextly they requested for a decree in regard to mesne profits from 9-12-1957 and 27-12-1958 to the date of their getting possession.

3. The facts in this suit are almost undisputed. G. Narayan was the son of one B. Giriyappa. G. Narayan died on 20-9-1956. Smt. Gowramma was his 'widow. G. Narayan and Gowramma's issues are plaintiffs 1 to 4, defendant-14 and one Sakku. Sakku died in the year 1960. When G. Narayan died in the year 1956, all these issues were minors. Gowramma died on 15-1-1959. Even at that time also the issues of G. Narayan and Gowramma were minors.

4. On 9-12-1957 Gowramma sold item No. 1 (b) of 'A' Schedule property for a sum of Rs. 23,000/- under Ex. D 32 to defendants 1 and 2 not only on her behalf but also on behalf of the minors as their guardian. On 27-42-1958 she once again sold item Nos. II(a) and (b) of 'A' Schedule properties to defendants 5 and 6 for a sum of Rs. 12,000/-, in the very capacity as described in Ex. D. 32. This sale deed is Ex.D.1. Defendants 5 and 6 in turn sold the same in favour of defendants 7 to 13. It has been already stated that Gowramma had expired on 15-1-1959 and that even at that time her issues were minors.

5. Misc. No. 43/1959 was filed under Section 7 of the Guardian and Wards Act, 1890 (hereinafter referred to as 'G & W Act') in the Court of the District Judge, Bangalore by one Arasappa, paternal uncle of the plaintiffs, defendant-14 and deceased Sakku, requesting the Court to appoint him as the guardian of the persons of the minors and their properties. On the filing of this Miscellaneous Application, an interim Receiver was appointed ex parte.

6. Plaintiff-1 filed an application I.A. No. 10 under Order 1 Rule 10 C.P.C. requesting that he should be impleaded as a party in the said proceeding as he had attained majority having been born on 14-2-1942. The said application was

allowed. Ultimately he was appointed guardian of the remaining minors and the Receiver appointed earlier was discharged.

7. The plaintiffs have challenged the alienations mainly on the ground that they were not supported by legal necessity or benefit to the estate.

8. The defendants have raised various contentions. The question in regard to the date of birth of plaintiff-1 had also cropped up in view of the contention of the defendants that the suit is barred by the period of limitation. The defendants have nextly contended that both the alienations made by the mother are supported by legal necessity as she had no other go but to sell the properties for payment of the arrears of income tax and for construction of a house and for payment of the antecedent debts.

9. The trial Court has held that plaintiff-1 was born on 14-2-1942 and that the suit instituted by him on 6-6-1964 was beyond the period of 3 years after his attaining majority. It was nextly held that so far as item No. 1(b) property in Schedule-A is concerned, the sale is supported by legal necessity. In regard to item Nos. II(a) and (b) properties of 'A' Schedule, it has concluded that the sale in favour of defendants 5 and 6 by Gowramma is not supported by legal necessity. It has ultimately dismissed the suit mainly on the ground of limitation and also in regard to item No. 1 (b) on the fact that the sale was supported by legal necessity.

10. Before proceeding to deal with the arguments urged on both sides, we consider it appropriate to narrate certain facts which are also undisputed.

11. Item No. 1(b) of 'A' Schedule was acquired by G. Narayan by why of gift from his father Giriyappa. Item Nos. II(a) and (b) of 'A' schedule were ancestral properties in the hands of G. Narayan. G. Narayan, his wife Gowramma, plaintiff 1 to 4, defendant-14 and Sakku constituted a joint family. It is when things stood thus that G. Narayan expired on 20-9-1956 i.e., after the coming into force of the Hindu Succession Act, 1956, on 17-6-1956. Therefore, it follows that on the death of G. Narayan, Gowramma, the plaintiffs 1 to 4, defendant-14 and Sakku (who died in the year 1960) did have their shares in all the suit properties, item 1(b) of 'A' Schedule which G. Narayan got from his father Giriyappa by way of gift,

became the joint family property in the hands of Gowramma, plaintiff, defendant-14 and Sakku, irrespective of the fact that the issue of G. Narayan and Gowramma were minors at that time. In our opinion, this situation has to be borne in mind while dealing with the legal aspects that have been canvassed one either side. One more aspect to be borne in mind is that Gowramma has executed the sale deeds Ex.D.32 and D. 1 not only on her behalf but also as natural Guardian of her minor children. It goes without saying that each one of the minor children of G. Narayan and Gowramma had interest in the joint family properties consisting of the suit schedule properties.

12. One of the contentions raised by Sri Nanjundaswamy is that Gowramma had not taken permission as required by Section 8 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as 'M & G Act') and therefore, the sales evidenced by Ex. D.32 and D.1 are not binding on the plaintiffs, defendant-14 and Sakku who died in the year 1960. The other contention put-forward in this very connection is that Gowramma, as natural guardian of her minor children, had no power to alienate the minors' interest in the joint family properties for any reason and therefore, Ex. D.1 and D. 32 are void transactions and as such not binding on the plaintiffs. The further argument advanced is that as the transactions are void transactions, Article (sic)5 and not Article 60 of the Limitation Act applies and as such, the trial Court has fallen into an error in holding that the suit of the plaintiffs is barred by the period of limitation.

13. Another argument leading to the very same consequence is addressed by Sri S. Nanjundaswamy, Learned Counsel for the appellants on the basis of Section 11 of the M & G Act. He urged that so fur as the undivided interest of the minors in the joint family properties is concerned, Gowramma, the mother, though a natural guardian of the person and properties of the minors would be a de facto guardian particularly in regard to the undivided interest of the minors in the joint family properties and as such she could not have alienated the suit properties under Exhibit-D1 and D 32. He pointed out that the M and G Act has come into force on 25-8-1956 and therefore, Section 11 had taken away the right of Gowramma, if at all she had any, under the personal Law viz., Customary Hindu Law.

14. Sri V. Krishna Murthi, Learned Senior Advocate appearing on behalf of some of the contesting respondents urged that Gowramma, as natural guardian of the minors, had the competence to alienate the property of the minors including their undivided interest in the joint family property for legal necessity or for the benefit of the estate particularly when the sale is in regard to the whole of the joint family property and not restricted to only the undivided interest of the minors in the joint family properly. He nextly argued that the customary Hindu Law did recognise that a minor can in law be the karta of a joint family particularly when he is represented by a capable guardian like the natural mother in the present case viz., Gowramma. Continuing this argument he urged that Gowramma could very well have acted as guardian of the karta viz., plaintiff-1 and sold the properties in that capacity. Sri Nanjundaswamy countered this argument by stating that a woman cannot, in law, be a karta of a joint family much less of a coparcener as laid down by the Supreme Court in Commissioner of Income Tax -v.- G. S. Mills, : [1965]57ITR510(SC) and therefore what was prohibited in law for Gowramma could not have been available to her by an indirect method by calling herself as a guardian of minor karta and therefore this argument of Sri V. Krishna Murthi has to fail. He did not agree with the contention of Sri V. Krishna Murthi that as natural guardian of her minor children she had the power to alienate the whole of the joint family property including her own share for legal necessity or for benefit to the estate. The other point canvassed is applicability of Section 7 of the Limitation Act. Section 7 of the Limitation Act, reads as follows :

'7. Disability of one of several persons.-- Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such, disability, and a discharge can be given without the concurrence of such person, time will run against them all ; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

'Explanation-I.- This section applies to a discharge from every kind of liability, including a liability in respect of any immoveable property.

Explanation-II.- For the purposes of this Section, the manager of a Hindu undivided family governed by the Mitakshara Law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.'

15. It was argued on behalf of the contesting defendants that when plaintiff-1 attained majority on 14-2-1960, he ought to have filed a suit within 3 years from that date but he has filed the suit on 6-4-1964 and therefore, the suit as a whole even on behalf of the other minors is barred by the period of limitation. The argument is that plaintiff-1 became the manager of the joint family and as manager of the joint family he had the competence to give discharge within the meaning of Section 7 of the Limitation Act and therefore, he ought to have filed the suit within 3 years from the date of his attaining majority in view of the applicability of Article 60 of the Limitation Act. This argument has been countered by Sri S. Nanjundaswamy. He contended that the remaining plaintiffs were minors. They attained majority either during the pendency of the suit or during the pendency of this appeal and hence their right cannot be taken away by the application of Section 7 of the Limitation Act, He nextly contended that the 1st plaintiff was not in actual management of the joint family properties as there is no evidence to that effect and as the joint family properties consisting of items 1(a) and II (a) and (b) of Schedule-A have been disposed of by Gowramma, Explanation-II of Section 7 would not apply and hence the argument of Sri V. Krishna Murthi has to fail.

16. One more contention advanced by Sri S. Nanjundaswamy is that in Misc. 43/1959 instituted by Arasappa on 13-2-1959, an interim receiver was appointed and the property was under his superintendence and hence of the Court till the receiver came to be discharged by the order dated 22 1-1962 (Ex.D.11) and therefore, it must be held that during the said period from 13-2-1959 to 22-1-1962, the property was under the superintendence of the Court of Wards and as such plaintiff-1, would in law, attain majority after completing the age of 21 years as per Section 3 of the Indian Majority Act, 1875.

17. Though it is seen that some dispute has been raised in regard to the date of birth of plaintiff-1 as 14-2-1942, we are clearly of the opinion that that fact does not

admit of any dispute in view of the contents of Ex. P. 5, the Secondary School Leaving Certificate and further in view of plaintiff-1 himself as stated in I.A. No. 10 filed in Misc. 43/1959 seeking that he should be impleaded as a party on the ground that he had become a major. He has in so many words narrated in it that his date of birth is 14-2-1942. Further in his evidence, plaintiff-1 has clearly stated that the date of birth mentioned in Ex. P. 5 is his correct date of birth. In that view of the matter, he completed the age of majority on 14-2-1960. The suit has been instituted on 6-4-1964 which would be beyond 3 years after attaining the age of majority. At this juncture, the contention of Sri Nanjundaswamy on the basis of Section 3 of the Indian Majority Act may conveniently be dealt with.

18. Section 3 of the Indian Majority Act, 1875 reads as follows :

'3. Age of majority of persons domiciled in India.-Subject as aforesaid every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure has been or shall be appointed or declared by any Court of justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Indian Succession Act or in any other enactment be deemed to have attained the majority when he shall have completed his age of twenty-one years and not before.

Subject as aforesaid, every other person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.'

It is stated on both sides that there was no Court of Wards Act in force in the old Mysore area and even uptil now. The parties belong to old Mysore area. Therefore, no Court of Wards was established in this area. Now the question is whether the District Court while dealing with Misc. No. 43/ 1959 under the G & W Act, would be a Court of Wards in view of appointing the interim receiver for superintendence of the property of the minors concerned and also in view of the legal position that superintendence by a Receiver appointed by a Court would be superintendence by the Court itself. We have no hesitation in observing that this

line of reasoning is far-fetched. The Court of Wards contemplated under Section 3 of the Indian Majority Act and the superintendence of the property of the minor by such Court of Wards cannot by any stretch of imagination be superintendence by a Court through a Receiver appointed by it. The Court of wards contemplated under the Court of wards Act has no such power as an ordinary Civil Court. Appointment of a Receiver by the Court under the G & W Act is under Section 12 of the G & W Act and that is an interim arrangement. Such appointment is under the provisions of Order 40 of the Code of Civil Procedure. Therefore, we cannot accept this contention. When that is so, the age of majority of plaintiff-1 cannot be extended, to his becoming 21 years of age. Hence it is plain that atleast so far as he is concerned, the suit is barred by time as provided under Article 60 of the Limitation Act.

19. The question whether Article 60 or 65 of the Limitation Act applies depends on the legal position whether these transactions entered into by Gowramma are void or voidable. According to Sri Nanjundaswamy, they are void on two grounds. The first is that the transactions are hit by Section 11 of the M and G Act. The second is, as a natural guardian, she could not have alienated the interest of the minors in the joint family property even for legal necessity or for the benefit of the estate.

20. Before going to this question, we deem it appropriate to deal with the application of the provisions of M and G Act particularly in relation to Sections 6, 8 and 11 bearing in mind the provisions of Section 12 of the said Act.

21. It has been already shown that the suit 'A' Schedule properties including item I (b) are the joint family properties. The members of the joint family at the relevant point of time were Gowramma, plaintiffs, defendant-14 and deceased Sakku. Hence it goes without saying that the plaintiffs had an interest in the joint family properties. Section 4(b) of the M and G Act defines 'guardian' as follows :

'4(b) 'guardian' means a person having the care of the person of a minor or of his property or of both his person and property, and includes :

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor's father or mother,

(iii) a guardian appointed or declared by a Court, and

(iv) a person empowered to act as such by or under any enactment relating to any Court of wards.'

Section 4(c) defines 'natural guardian' to mean any of the guardians mentioned in Section 6. The very fact that the 3 other classes of guardians enumerated in Section 4(b) of the M and G Act are separately noted and 'natural guardian' is also separately noted in Section 4(c) has to be borne in mind. Section 6 of the M and G Act clearly lays down that in the absence of the father, mother will be the natural guardian. G. Narayan died on 20-9-1956. Therefore, Gowramma, the mother of the plaintiffs and defendant-14 and deceased Sakku became the natural guardian. Section 6 of the M and G Act reads as follows :

'6. Natural Guardians of a Hindu minor : The natural guardians of a Hindu minor in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are--

(a) in the case of a boy or an unmarried girl - the father, and after him, the mother : provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother ;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl -- the mother, and after her, the father ;

(c) in the case of a married girl - the husband;'

Thus it is plain that a minor's undivided interest in the joint family property does not fall within the ambit of Section 6 of the M and G Act. When that is so, Section 8 dealing with the powers of a natural guardian and laying down the necessity for a natural guardian to obtain permission or sanction from the Court before alienating the minor's property will not be attracted so far as the minor's undivided interest in the joint family property is concerned. Section 8(3) of the M and G Act lays down that any disposal of immoveable property by a natural guardian, in contravention

of Subsection (1) or Sub-section (2) is voidable at the instance of the minor or any person claiming under him. When Section 8 does not take within its ambit the minor's undivided interest in the joint family property, Section 8(3) would not be applicable. Therefore, the contention based on the provisions of Section 8 in challenging the suit transactions has no legs to stand.

22. Now it is to be examined whether the suit transactions are void in view of the bar provided in Section 11 of the said Act. Section 11 of the M and G Act reads as follows :

'De facto guardian not to deal with minor's property : After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.'

Understanding of the provision involves 2 important questions : (1) who is a 'de facto' guardian (2) whether this provision applies to minor's undivided interest in the joint family property. The other questions that may be involved in understanding the provisions of Section 11 would no come to surface in this case as they would have no relevance to the facts and circumstances of the case.

23. 'De facto guardian' is not defined anywhere in the M and G Act or in G and W Act This takes us to the customary Hindu Law. The Learned Author Sri Mulla has in his book titled 'Hindu Law' 15th Edition, summed up the position in law at page 636 as follows ;

'A person who is not an ad hoc guardian and does not pose as a guardian for particular purpose, but manage the affairs of the infant in the same way as a de jure guardian does could be described as a 'de facto' guardian although he is not a natural guardian or a guardian appointed by the Court.'

Further on, the Learned Author has summed up to the effect that a de facto guardian has the same power of alienating the property of his ward as a natural guardian. While understanding who would be the 'de facto guardian', it would not, in our considered opinion, be necessary to take into consideration whether he

would be in regard to the separate or exclusive property or his undivided interest in the joint family property. That would be immaterial. We have already pointed out the classification of guardians as found in Section 4 of the M and G Act. The position in jaw as stated by Sri D.F. Mulla summed up on the principles enunciated in various decisions leads to the necessary conclusion that a 'natural guardian' is not a 'de facto guardian' and 'de facto guardian' cannot be a 'natural guardian'. De facto guardian can neither be a guardian appointed by a Court under the G and W Act nor be a testamentary guardian.

24. We have already pointed out that 'de facto guardian' is not defined either in M and G Act or G and W Act. We are unable to find any clear definition even under the customary Hindu Law. One can easily see that 'de facto' is to be understood in law in relation to what is 'de jure'. Shorter Oxford English Dictionary gives the meaning of 'de facto' as 'in fact, in reality, in actual existence, force or possession as a matter of fact.' Therefore, it will have to be, in our opinion, understood that a person who is in fact acting as a guardian of the person of a minor and of the property of a minor having the same in his physical possession so as to enable him to exercise control over it, would be a 'de facto' guardian. But he could not be a guardian of any other type already adverted to by us.

In the decision in Palani Goundar -v.- Vanjiakkal : (1956)1MLJ498 . It is laid down as follows:

'A de facto guardian of a minor is one who is not a legal guardian in the sense that he is either a natural guardian or a testamentary guardian or a Court guardian, but who being interested in the minor, though a stranger, takes charge of the management of the minor's property.'

Therefore, the inevitable conclusion is that a 'natural guardian' and a 'de facto guardian' of a minor cannot coexist. When Gowramma, the mother of the plaintiffs, defendant-14 and deceased Sakku was very much there in the picture, there could not be any 'de facto guardian.' Therefore, the alienation by Gowramma cannot, in law, be considered as an alienation made by a de facto guardian and as such Section 11 of the M and G Act would not apply. In the instant case, Gowramma is undoubtedly the natural guardian of the minors. She was in actual possession of

the properties of the joint family including the minors' undivided interest in them. The minors 1st & 2nd Pltf in question had separate property viz., Schedule 'B' and 'C' properties. She was in actual possession and management of the said properties also. Therefore, she would satisfy all the qualifications of a 'de facto guardian'. Therefore, Gowramma would as well be a 'de facto' guardian of the suit schedule properties. But she cannot be a de facto guardian as she is a natural guardian. Then in is difficult to understand how she could be the natural guardian of only 'B' and 'C' schedule properties while at the same, she was actually in possession and management of 'A' schedule properties also in the very capacity. She had not intruded in the position of 'guardianship' so as to be called 'guardian de son tort' as defined in Black's Law Dictionary Fifth Edition (1979). Therefore, it appears plain to our mind that to make a distinction between the separate properties of the minors and undivided interest of the minors in the joint family properties so far as management by a natural guardian is concerned would be nothing but artificial. At this stage, Sri Nanjundaswamy's contention that so far as the minor's undivided interest in the joint family property is concerned, Gowramma was a 'de facto guardian' may conveniently be dealt with.

25. Sri Nanjundaswamy placed reliance basically on two decisions. The first one is M. Peethambaram -v.-N. Lakshminarayana, 1978(1) Andhra Weekly Reporter 512. This decision is rendered by the learned Single Judge Jeevan Reddy, J. of the Andhra Pradesh High Court. It is laid down that M & G Act curtails the powers of the de facto guardian under the old Hindu Law to deal with the property of the minors. It further lays down that Section 11 read with the definition of the expression 'guardian' in Clause (h) of Section 4 shows that the Parliament does not choose to recognise the 'de facto guardian' as one of the guardians in respect of the property of a Hindu minor and has made it clear that no person shall be entitled to dispose of or deal with the property of a minor (whether an undivided share or otherwise) merely because he purports to act as his de facto guardian. In the said case, alienations were effected by the paternal grand-father.

The next decision is Pattayi Padayachi -v.- Subbaraya Padayachi : (1980)2MLJ296 . It has to be observed that this decision fully supports this part of the contention of Sri S. Nanjundaswamy. It is rendered by a Single Judge

(Ratnam, J.) of the Madras High Court. It has been held that on the death of the father when mother as guardian alienates the property, the alienation is void. It is also held that Section 11 of the M & G Act takes within its ambit both the separate property of the minors and their undivided interest in the joint family property. Lastly it has been held that so far as the minor's undivided interest in the joint family property is concerned, the mother, though a natural guardian of the persons of the minors, will be a de facto guardian, of such undivided interest. It is because of this we have observed that this decision fully supports the contention of Sri S. Nanjundaswamy.

26. Section 11 of the M & G Act does not, by itself state who are de facto guardians vis-a-vis which kind of property of the miner. Therefore, as we have already observed, one has to go to the position in law according to the customary Hindu Law. That position has been already looked into in one of the preceding paragraphs. It has been found that natural guardian and de facto guardian cannot co-exist. Therefore, to make out such a distinction vis-a-vis the separate property of the minor's and minor's undivided interest in the joint family property would be, in our considered opinion, absolutely artificial. It is settled law that a natural guardian of a minor has the necessary competence to deal with even the separate property of the minors. We do not consider that any authorities need be cited in support of this position in law. None-the-less, natural guardian remains a guardian of the minor in other senses also. No distinction has been made under the customary Hindu Law except in regard to the alienations in respect of undivided interest of the minors in the joint family properly.

27. In Sunamani Dei -v.- Babaji Das, : AIR1974 Ori184 , R. N. Mishra, J. (as he then was) has held that when the minor and his mother constitute a Hindu joint family each having a undivided interest in the house belonging to the family, in the absence of the father, the mother, as natural guardian, can alienate even the minor's half share in the house under the personal law. Dealing with the question that a female member cannot act as the karta of a joint family, his Lordship has held as follows :

'The sharp division in judicial opinion as to whether a female member can act as the karta has been set at rest by the Supreme Court in : [1965]57ITR510(SC) (Commissioner of Income-tax v. Seth Govindram Sugar Mills). Law has also been settled that a Hindu joint family can exist with one male member and his mother (See : [1966]60ITR293(SC) , G. Buddanna v. Commissioner of Income Tax, Mysore). At the time of the impugned alienation (Ex. A), the minor and his mother were members of such a Hindu joint family each of them having a moiety undivided interest in the property (as conceded in paragraph 1 of the plaint). The plaintiff asked for a declaration that Ex. A was not valid alienation. So far as the mothers (defendant-No. 3's) share is concerned, on the finding of the lower Appellate Court the same has got to be upheld. So far as the minor's half share is concerned, as natural guardian the mother could alienate the same under the personal law.'

28. In the present case, Gowramma had her share in the joint family property including the suit Schedule-A property in view of her husband having died after the coming into force of the Hindu Succession Act, 1956. Under Ex.D.1 and D.32, she has sold away item No. 1(b) and 2(a) and 2(b) of suit Schedule 'A' property on her behalf and on behalf of her minor children as natural guardian. This makes it clear that she has under the said two sale deeds, sold away her share and the minors' undivided interest in the joint family properties. The position in law, as already stated by us, is very well supported by the decision in A.I.R. 1974 Orissa page 1845. In this connection the decision of the Division Bench of the Madras High Court in Venkatakrishna Reddy -v.- Amarababu : (1971)2MLJ466 after considering the provisions in the M & G Act and G & W Act and what is available under the Customary Hindu Law, lays down as follows :

'The distinction that obtained under the general Hindu Law between the separate property of a minor and his undivided coparcenary interest is kept up also under the provisions of the Hindu Minority and Guardianship Act of 1956. Section 6 of that Act which defines a natural guardian excludes minors' undivided interest in a joint family property from the operation of that Section and Section 12 imposed a prohibition against the appointment of a guardian by a Court other than the High Court in respect of an undivided interest of a minor in a joint family property when

such joint family property is in the management of an adult member of the family. Therefore, it is not possible to hold that the fourth defendant as the natural guardian of the minor sons is authorised to sell the undivided interest of the minors as such in the joint family properties either under the general Hindu Law or under the provisions of this Act. But in this case the fourth defendant has purported to sell not the undivided interest of the minors as such in the joint family property but the entirety of the properties acting as guardian of both the minors and the question is whether the agreement for sale of the entire joint family property of the minors is valid.'

It was held valid.

29. This position in law has got to be necessarily so because the natural guardian Gowramma in this case has every legal right to manage the properties in view of the simple fact that she had also a share in the properties. In order to manage her share of the properties, she must necessarily manage the properties in entirety which includes minors' undivided interest in the joint family as well.

30. In the decision in Pattayi Padyachi -v.- Subbaraya Padayachi : (1980)2MLJ296 reliance has been placed on the decision of the very High Court in Ranganatha Gounder -v.- Kuppuswami Naidu, : (1976)2MLJ128 . The facts in 1980 (2) M.L J.2964 were as follows :

In 1949, the father died leaving behind him his minor sons, respondents I and 2 and his widow the third respondent. It was alleged by Respondents 1 and 2 that after the death of their father, their mother the third respondent did not look after the family and the family affairs but launched a programme of alienating the family properties, that defendants 2 to 9 were such alienees and that those alienations were not binding on them as they were minors. Respondents 1 and 2 prayed for partition and separate possession after setting aside the alienations as void. The relief claimed by them was granted. It is to be remembered that the father of Respondents 1 and 2 had already expired and the alienations were made by the mother as natural guardian after the death of their father. In the decision in 1976(2) Madras Law Journal, 1287, which has been made use of to base the conclusion as aforesaid, the mother as guardian of the minor plaintiff has alienated

the properties even when the father was alive. Therefore, this fact shows that the father was very much alive. When such being the case, such alienations made by the mother as guardian must be regarded as void in law. Hence we are respectfully unable to agree with the principle laid down in Pattayi Padayachi's case, 1980(2) Madras Law Journal 296.

31. The question whether the mother would be a de facto guardian in regard to the minors undivided interest in the joint family properties as laid down in the very decision has been already answered by us. The question concerning Section 11 of the M & G Act is whether it takes within its ambit the minor's undivided interest in the joint family property also. On this question 2 decisions reported in 1978(1) Andhra Weekly Reporter 5123 (already referred to) and 1980(2) Madras Law Journal, 2964 (already referred to) are one in laying down the proposition that the minor's undivided interest in the joint family properly also falls within the ambit of Section 11. The simple reasoning is that Section 6 clearly excludes such undivided interest of the minors in the joint family property from its ambit. But the plain language of Section 11 does not clearly exclude. Therefore, the legislature must have intended that all the property of the minors could be within the ambit of Section 11 of the M & G Act.

32. We have already come to the conclusion that Gowramma, the mother of the plaintiffs, defendant-14 and deceased Sakku, being a natural guardian, cannot in law, be the de facto guardian vis-a-vis minors' undivided interest in the joint family property. That is sufficient to lead to the conclusion that the aforesaid question in regard to the ambit of Section 11 of the M and G Act might be unnecessary to be gone into. But even, then, we consider it appropriate to deal with that aspect also as the same has been canvassed before us.

33. The provisions of the M and G Act, the G and W Act and the customary Hindu Law relating to Manager and karta of a joint family have been considered in the decision in Re. Krishnakant, : AIR1961 Guj68 by Bhagwati, J. (as he then was). A detailed and exhaustive examination of the said provisions has been made and step by step reasoning has been developed in a cogent manner. We find that there is very little scope to improve on the reasoning found therein. It has been

held that the M and G Act has been passed to amend and codify certain parts of the law relating to minority and guardianship among Hindus. The Act is thus a codifying enactment in respect of the subject matter with which it deals. The subject matter with which the Act deals is limited to guardians in respect of the minor's person or in respect of the minor's property other than his undivided interest in joint family property, whether they be natural guardians or testamentary guardians or guardians appointed or declared by Court, and the concept of a guardian in respect, of the undivided interest of a minor in joint family property is not only foreign to the Act but is specifically excluded from the scope and purview of the Act by express enactment. It has been further held that the manager and karta of a joint family can alienate the joint family property without obtaining permission of the Court under Section 8 of the M and G Act.

This decision is followed in Venkataramanamurthy -v.-Subbayyamma, 1966(1) Andhra Weekly Reporter 368 and the same principles are laid down.

34. The decision in : AIR1961 Guj68 (Re. Krishnakant's case, : AIR1961 Guj68) is not at all referred to in the decision in Pattayi Padayachi's case (1980(2) Madras Law Journal, 296 but it has been referred in the decision in M. Peethambarams's case (1978(1) Andhra Weekly Reporter, 5123) in paragraph 17. The reason why Jeevan Reddy, J. chose not to accept the reasoning given in Re. Krishnakant's case, : AIR1961 Guj68 , can very well be expressed by excerpting the whole of paragraph 17 of the Judgment. It reads as follows :

'17. In re : Krishnakant : AIR1961 Guj68 arose from a Petition filed by the guardian for sanction to alienate certain immovable properties belonging to the joint Hindu family consisting of himself, his wife and his four minor children. While granting the permission, the Court imposed certain conditions. The guardian filed a Revision Petition before the High Court complaining of the said condition. When the Revision Petition came up for hearing before the High Court, Bhagwati. J. was of the prima facie opinion that the very petition is not maintainable under the Act and therefore, he heard the counsel specifically on that point, and after referring to Sections 4, 6, 8, 9 and 12 of the Act, came to the conclusion that 'all the three types of guardians dealt with by the Act viz., natural guardian, testamentary

guardians and guardians appointed or declared by Court, or either guardians dealt in respect of the minor's person or guardians in respect of the minor's property other than his undivided interest in that joint family property and the Act does not contemplate and deal with any guardian in respect of the undivided interest of a minor in the joint family property'. It was further observed :

'The subject matter with which the Act deals is limited to guardians in respect of the minor's person in respect of the minor's property, other than his undivided interest in the joint family property, whether they be natural guardians or testamentary guardians or guardians appointed or declared by Court, and the concept of a guardian in respect of the undivided interest of a minor in joint family property is not foreign to the Act but is specifically excluded from the scope and purview of the Act by express enactment ..... 'On the said reasoning, the Learned Judge held further :

'The restrictions contained in Section 8 do not therefore, apply in respect of the undivided interest of a minor in the joint family property and a father who is the manager and karta of the joint and undivided Hindu family consisting of himself and his sons can alienate joint family property in its entirety including the undivided shares of his minor sons in such property without obtaining the previous permission of the Court provided the alienation is one otherwise justified under Hindu Law.....'A perusal of the judgment would show that the Learned Judge did not at all refer to Section 11 of the Act. In fact, for the purpose of the said case, it was wholly unnecessary to refer to Section 11 of the Act.'

As is clear from the above, it was found that in the said decision, reference to Section 11 of the M and G Act was not at all found. With great respect, we are unable to agree in view of what we have found in Re : Krishnakant's case, : AIR1961 Guj68 of the said decision found at page 71. A reading of the whole paragraph 7 leaves no doubt in our mind that though Section 11 does not appear anywhere in figures, what is provided in it has been taken into consideration along with the provisions of Sections 4, 6, 7, 8, 9, 12 and 13 of the M and G Act. It is after the examination of these provisions, as already stated by us, and the provisions in the G and W Act and the Hindu Law relating to Manager and karta of

a joint family particularly when a father having minor children is the karta or the manager, that the reasoning has been developed and the conclusion arrived at and the principle has been laid down. We respectfully accept the reasoning and the conclusion given in Re: Krishnakant's case, : AIR1961 Guj68 and hold that Section 11 of the M and G Act does not take within its ambit the minor's undivided interest in the joint family property. Therefore, the other part of the contention of Sri S. Nanjundaswamy also fails.

35. We have already held that a natural guardian who has a share in the joint family property along with the minors' undivided interest in the same, has the legal competence to alienate the property as a whole, This is well supported by the principle of law available in Trimbak Raoji -v.- Lonkaran, AIR 1948 Nagpur 324, wherein it is held as follows:

'There is nothing in the Hindu Law which absolutely forbids a minor though a senior member of a Joint Hindu Family from occupying the status of a managing member of the Joint Hindu Family, particularly when such a senior member has a capable guardian to represent him, A minor in order to be a managing member need not be of an age capable of having a wife and a son'.

This principle has been repeatedly followed by the Orissa High Court and the Patna High Court in Budhi Jena -v.-Dhobai Naik, : AIR1958 Ori7 , Trutia Mirudha -v.- Basudev Singh, : AIR1964 Ori123 , Nathuni Mishra -v.- Mahesh Mishra, : AIR1963 Pat146 , Jageenath Singh -v.- Narayan Sarogi, : AIR1965 Pat300 & Tarni Prasad -v.- Basudeo, : AIR1981 Pat331 . For our purpose, we take this principle as well-settled.

35. In Trimbak Raoji's case, AIR 1948 Nagpur 324, the decision of the Madras High Court in Mohideen Ibrahim Nachi -v. Ibrahim Sahib, AIR 1948 Nagpur 324 was dissented from. In the decision in Venkatakrishna Reddy -v.- Amarababu : (1971)2MLJ466 , it has been laid down that the mother acting as the natural guardian of the eldest son who is the karta of the joint family or as the natural guardian of all the minor coparceners as one group and of the property of that group as a whole would have authority to enter into a contract of sale for the benefit or for the necessity of the minor co-parcenars. This principle laid down by

the Nagpur High Court in Trimbak Raoji's Case, AIR 1948 Nagpur 324 has been reiterated by the Division Bench of the Madras High Court in Venkatakrishna Reddy's case, 1971 (2) Madras Law Journal 466.

37. Sri Nanjundaswamy argued that Ex. D-1 and D-32 did not make out that Gowramma had alienated the properties as guardian of the Karta viz., plaintiff-1 who was the eldest son in the family (though a minor) and therefore, this principle would not be attracted. We have already pointed out that in both these transactions, Gowramma has been described as 'not only on her behalf but also on behalf of the minors'. That necessarily includes plaintiff-1, who in law, ought to be regarded as karta, though a minor member. Hence we reject this contention.

38. This brings us to the question whether Article 60 or Article 65 of the Limitation Act applies to the case on hand.

39. The conclusions reached in the preceding paragraphs show that the transactions evidenced by Exhibits D. 1 and D. 32 are not void but voidable. They have been entered into by the guardian of the minors. We are not at this stage concerned with the share of Gowramma in the joint family property. Therefore, it is plain that Article 60 and not Article 65 applies to the facts of the case. When that is so, the suit of the 1st plaintiff is clearly barred by the period of limitation. Whether the suit of the other plaintiffs also would be barred by virtue of Section 7 of the Limitation Act is to be considered.

40. Section 7 of the Limitation Act has been excerpted in paragraph 11 of the Judgment. The stress is on Explanation II. Sri Nanjundaswamy argued that the burden is on the defendants to establish that plaintiff-1 on attaining the age of majority was actually in the management of the joint family properties, but the material on record is not sufficient to establish that fact while on the other hand, it is seen that the properties mentioned in Misc. 43/1959 were in the possession and superintendence of the Receiver and therefore, Section 7 is not applicable. He further argued that even in the absence of a provision like Explanation-II in Section 7 of the Indian Limitation Act, 1908, Courts have ruled that for the application of Section 7, actual management of the joint family property by the person who attains majority has been held necessary. He relied on the decision of the Bombay

High Court in I-T. Commissioner -v.- Ahmedabad Advance Mills, AIR 1938 Bombay 206. It is laid down therein that where an elder brother is not the manager of the family and is entitled to sue on behalf of himself and his minor brothers, Section 7 does not apply and the time begins to run against the minor brother on his attaining majority. In this decision in Bapu Tatya Desai -v.- Ala Ravji Desai, AIR 1921 Bombay 289, has been distinguished on the ground that the actual management of The joint family by the elder brother had not been found in the said case. In Bapu Tatya Desai's case, AIR 1921 Bombay 289 it has been laid down as follows :

'The main object of the Legislature in Section 7 is to limit the indulgence which is otherwise given to minors, so that if there are several minors who can claim the benefit of Section 6, that concession does not extend to cover the whole period of time upto the youngest of the minors becoming a major, but can only be availed of by the eldest of them.'

It is further laid down therein that when the plaintiffs were brothers and members of the joint family, and one of them is more than 21 years of age, the suit brought by him attracted the provisions of Section 7 of the Indian Limitation Act, 1908.

41. Sri Nanjundaswamy nextly relied on the decision in Bhikarchand v. Lachhamandas, AIR 1938 Bombay 392. The facts of that case are as follows :

The mother of two brothers who were minors alienated the properties which were the joint family properties of the two brothers. No other property belonging to the two brothers was in existence. The two brothers were maintained by their aunt. Their Lordships of the Bombay High Court held that the ordinary presumption which arises in the case of Joint Hindu Family possessed of ancestral property, that the eldest must be manager of the family and its property cannot apply under the facts' and circumstances of the case. Hence Section 7 of the Indian Limitation Act, 1908, was not attracted.

42. We have already shown that Schedule-'B' and 'C' properties are the separate properties of the minors (plaintiffs 1 & 2) and that the 1st plaintiff himself has, in his application Ex. 0. 10 filed in Misc. 43/1959 expressly stated that he had come of

age and was in actual management of the joint family and its properties. Hence it would be too late in the day to contest this fact. It is also available in the evidence in this case that the family of the plaintiffs is a trading family and was running business.

43. The other decision relied on by Sri Nanjundaswamy is Shantaya v. Mallappa, AIR 1938 Bombay 392. Stress is placed on the 'actual management'. For this case also, the very same reasoning given in the preceding paragraph applies.

44. In view of the foregoing reasons, we hold that the 1st plaintiff became the manager of the Joint Hindu Family on his attaining the age of 18 and particularly so on his attaining the age of majority during the pendency of Misc. 43/1959 and came to be in actual management of the joint family properties including the suit schedule 'A' property so far as his minor brothers and sisters are concerned. Therefore, the ingredients of Section 7 of the Indian Limitation Act, 1908 are satisfied. Hence the inevitable conclusion that the suit is barred by the period of limitation even in regard to other plaintiffs also has to be reached and is reached.

45. We have already stated that the Trial Court has found that in regard to item 1(b) of suit schedule 'A', legal necessity has been established by defendants 1 and 2 while the same is not established by defendants 5 to 13 in regard to item Nos. 2(a) and 2(b) of Suit Schedule-A. In view of the reasons and conclusions reached by us in the preceding paragraphs, we do not consider it necessary to go into all the details concerning this part of the case of the parties. But Ex.D. 32 under which the property in item 1(b) of Suit Schedule-A has been sold is to meet the necessity of clearing the income tax dues which amounted to Rs. 16,809-63. This itself shows that it would be of no use to contend that the sale evidenced by Ex. D. 32 is not supported by legal necessity. The reasons given by the trial Court to conclude that the sale transaction in Ex. D. 1 is not supported by legal necessity or benefit to the estate are well-supported. We do not think it advisable to reiterate the same. This conclusion of the trial Court is confirmed by us. But as already made clear these conclusions on the question of legal necessity or benefit to the estate are not of much consequence in view of the findings on the legal aspects.

46. In the result, this appeal fails and is dismissed. No costs.

47. Sri S. Nanjundaswamy, Learned Counsel appearing for the appellant made an oral request for a certificate to appeal to the Supreme Court. The request is rejected.

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